

**Speaking Points**  
**South Platte River Compact**  
**Governor's South Platte Task Force**  
**Sarah A. Klahn, Esq.**  
**July 16, 2007**

**1. What is the SPR Compact?**

- a. You've been given a copy.
- b. Entered between Nebraska and Colorado in 1923 to apportion the river between the states.
- c. It was also the settlement of a lawsuit brought in 1916 by Nebraska irrigators against Colorado irrigators demanding recognition of senior rights in Nebraska.
- d. Though this was nominally a suit by the Western Ditch in Nebraska, it was financed by the State of Nebraska to make a grab for waters of the river.

**2. How does the SPR Compact operate?**

- a. This is what is important to District 64 users.
- b. States that from 4/1 to 10/15 Colorado must curtail uses *in District 64 only* which are junior to June 14, 1897, to make 120 cfs available at the state line. Art. IV.2.
- c. While the Compact recognizes that climate irregularities can cause "fluctuations" in river flow, deficiencies can't be caused by failure to administer water rights. Art. IV.5.
- d. Also allows for Nebraska to build the Perkins County Canal to divert from Colorado in the very lowest reach of District 64 near Ovid for use in Nebraska.
- e. Compact was negotiated principally by Delph Carpenter and approved by Colorado and Nebraska legislatures and Congress.

**3. Why did the Colorado agree to put the onus on District 64 users to supply water for the state line and the Perkins County Canal?**

- a. *There is one reason:* The negotiators believed that there would always be sufficient flow at the state line because of return flows from upstream irrigation ditches and reservoirs.
- b. Carpenter reported to the governor and legislature in 1925 regarding the changed conditions on the river from the headwaters to the state line and that they would supply water to Nebraska, pp. 9-10
- c. He assured them: "The increase in flow at the state line will ultimately remove all necessity for regulation." Page 20.

- d. It was his view that the improvement of flow at the state line would make the SPR Compact self-executing and protect the water rights in both states without regulation of Colorado water rights. Page 20.
  - e. One of the chief reservoirs providing this benefit was North Sterling Reservoir. Letter to Colorado Governor Shoup, 4/14/1922, page 4.
  - f. This conclusion was based on intensive engineering investigations of the river performed as the negotiations proceeded from 1918 to 1922.
  - g. Nebraska's chief negotiator accepted this view. Letter to Colorado Governor Shoup, 4/14/1922, page 4.
4. **If the wells don't fully replace in time, location and amount, they are interfering directly with the concept underlying the protection of District 64 in the SPR Compact.**
- a. Return flows and seepage return to the SPR underground.
  - b. Wells directly interfere with those returns by diverting them and reducing the water flows that guarantee District 64's protection under the SPR Compact.
  - c. Carpenter told M.C. Hinderlider that it made no difference what nature of diversion might diminish the 120 cfs – it had to be regulated.
5. **Carpenter believed wholeheartedly in applying the priority system in Colorado.**
- a. You may wish to read Dan Tyler's excellent history called "Silver Fox of the Rockies." Carpenter believed strict application of the priority system was the basis of Colorado's economic well-being.
  - b. Take a look at his report to the Colorado General Assembly in 1911, page 2.
  - c. The issues raised to this Task Force are not new; they are at least 100 years old.
6. **The Task Force needs to protect the assurances given District 64 users when the Compact was adopted by the State of Colorado. Do not allow well use to undermine the promises of the Compact to District 64 users.**

## SOUTH PLATTE RIVER COMPACT

§ 37-65-101

New Mexico, a proposed participating project under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620) and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

### ARTICLE I

A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems, including return flow to the La Plata River from Animas River diversions, for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project providing such uses in New Mexico are within the allocation of water made to that state by articles III and XIV of the Upper Colorado River Basin Compact (63 Stat. 31).

B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate paragraph A of this article.

### ARTICLE II

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States.

#### Historical and Statutory Notes

##### Complementary Legislation:

N.Mex.—NMSA 1978, § 72-13-1.  
U.S.—Sept. 30, 1968, Pub.L. 90-537, 82 Stat.  
885.

##### Derivation:

C.R.S. 1963, § 149-13-1.  
Laws 1969, H.B. 1369, § 1.

#### Library References

States Ⓒ 6.  
Westlaw Topic No. 360.

Westlaw Topic Nos. 360, 405.  
C.J.S. States §§ 31 to 32, 143.

### ARTICLE 65

#### South Platte River Compact

##### Section

37-65-101. South Platte River compact.

#### § 37-65-101. South Platte River compact

The General Assembly hereby approves the compact, designated as the "South Platte River Compact", between the states of Colorado and Nebraska, signed at the City of Lincoln, State of Nebraska, on the 27th day of April, A.D. 1923, by Delph E. Carpenter as the Commissioner for the State of Colorado, under authority of Chapter 243, Session Laws of Colorado, 1921, and Chapter 190, Session Laws of Colorado, 1923, and by Robert H. Willis as the Commissioner for the State of Nebraska, thereunto duly authorized, which said compact is as follows:

South Platte River Compact Between  
The States Of  
Colorado And Nebraska

The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective Governors, have named as their commissioners:

Delph E. Carpenter, for the State of Colorado; and Robert H. Willis, for the State of Nebraska; who have agreed upon the following articles:

Article I

In this compact:

1. The State of Colorado and the State of Nebraska are designated, respectively, as "Colorado" and "Nebraska".
2. The provisions hereof respecting each signatory State, shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.
3. The term "Upper Section" means that part of the South Platte River in the State of Colorado above and westerly from the west boundary of Washington County, Colorado.
4. The term "Lower Section" means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.
5. The term "Interstate Station" means that streams gauging station described in Article II.
6. The term "flow of the river" at the Interstate Station means the measured flow of the river at said station plus all increment to said flow entering the river between the Interstate Station and the diversion works of the Western Irrigation District in Nebraska.

Article II

1. Colorado and Nebraska, at their joint expense, shall maintain a stream gauging station upon the South Platte River at the river bridge near the town of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the Western Irrigation District in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the first day of April and the fifteenth day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require.

2. The State Engineer of Colorado and the Secretary of the Department of Public Works of Nebraska shall make provision for the co-operative gauging at and the details of operation of said station and for the exchange and publication of records and data. Said state officials shall ascertain the rate of flow of the South Platte River through the Lower Section in Colorado and the time required for increases or decreases of flow, at points within said Lower Section, to reach the Interstate Station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the Interstate Station.

#### Article III

The waters of Lodgepole Creek, a tributary of the South Platte River flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

1. The point of division of the waters of Lodgepole Creek shall be located on said creek two miles north of the boundary line common to the signatory states.

2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of diversion and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division.

3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the Interstate Station, for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the Interstate Station in compliance with Article IV of this compact, provided, however, that such runs of stored water shall be made in amounts of not less than ten cubic feet per second of time and for periods of not less than twenty-four hours.

#### Article IV

The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

1. At all times between the fifteenth day of October of any year and the first day of April of the next succeeding year, Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

2. Between the first day of April and the fifteenth day of October of each year, Colorado shall not permit diversions from the Lower Section of the river, to supply Colorado appropriations having adjudicated dates of priority subsequent to the fourteenth day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day, below a mean flow of 120

cubic feet of water per second of time, except as limited in paragraph three (3) of this Article.

3. Nebraska shall not be entitled to receive and Colorado shall not be required to deliver, on any day, any part of the flow of the river to pass the Interstate Station, as provided by paragraph two (2) of this Article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

4. The flow of the river at the Interstate Station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the Interstate Station, and it is agreed that, in the performance of the provisions of said paragraph two (2), minor or compensating irregularities and fluctuations in the flow at the Interstate Station shall be permitted; but where any deficiency of the mean daily flow at the Interstate Station may have been occasioned by neglect, error or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the Lower Section of the river in that state, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the Interstate Station, over and above the amount specified in paragraph two (2) of this Article, sufficient to compensate for such deficiency.

6. Reductions in diversions from the Lower Section of the river, necessary to the performance of paragraph two (2) of this Article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its Constitution, laws, and the decisions of its courts.

7. Subject to compliance with the provisions of this Article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the first day of April to the fifteenth day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the Interstate Station.

#### Article V

1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg Irrigation District which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both states, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This Article shall not excuse Nebraska

water users from making reports to Nebraska officials in compliance with the Nebraska laws.

2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph one (1) of this Article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar land owners served by said canals within Colorado; provided, however, that Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interest of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments; provided, however, such charges or assessments shall be the same as those levied against similar interests of owners of lands in Colorado.

3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights-of-way, easements or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above mentioned canals which now or hereafter may extend into Nebraska.

#### Article VI

It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed "Perkins County Canal" (sometimes known as the "South Divide Canal") and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska, in the manner and at the time in this Article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights-of-way, easements or lands as may be necessary for the construction, maintenance, and operation of said canal: subject, however, to the reservations and limitations and upon the conditions expressed in this Article which are and shall be limitations upon and reservations and conditions running with the rights and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

2. The net future flow of the Lower Section of the South Platte River, which may remain after supplying all present and future appropriations from the Upper Section, and after supplying all appropriations from the Lower Section perfected prior to the seventeenth day of December, 1921, and after supplying the additional future appropriations in the Lower Section for the benefit of

which a prior and preferred use of thirty-five thousand acre-feet of water is reserved by subparagraph (a) of this Article, may be diverted by said canal between the fifteenth day of October of any year and the first day of April of the next succeeding year subject to the following reservations, limitations and conditions:

(a) In addition to the water now diverted from the Lower Section of the river by present perfected appropriations, Colorado hereby reserves the prior, preferred and superior right to store, use and to have in storage in readiness for use on and after the first day of April in each year, an aggregate of thirty-five thousand acre-feet of water to be diverted from the flow of the river in the Lower Section between the fifteenth day of October of each year and the first day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved.

(b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this Article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the Lower Sections, as of priority of appropriation of date December 17, 1921, only between the fifteenth day of October of any year and the first day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the Upper Section or present appropriations in the Lower Section and those hereafter to be made therein as provided in subparagraph (a).

3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the first day of April to the fifteenth day of October of any year or against any present or future appropriator or use of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the Interstate Station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this Article.

4. Diversion of water by said canal shall not diminish the flow necessary to pass the Interstate Station to satisfy superior claims of users of water from the river in Nebraska.

5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.



6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the Interstate Stations as provided by Article IV of this compact.

#### Article VII

Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

#### Article VIII

Whenever any official of either State is designated herein to perform any duty under this compact, such designation shall be interpreted to include the state official or officials upon whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes, to make deliveries of water at the Interstate Station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

#### Article IX

The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

#### Article X

This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the Western Irrigation District to the water of the South Platte River from the sixteenth day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termination, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such period of time.

#### Article XI

This compact shall become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislature shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and

the President of the United States is requested to give notice to the Governors of the signatory States of the approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the Signatory States.

Done at Lincoln, in the State of Nebraska, this 27th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three.

Delph E. Carpenter,

Robert H. Willis.

#### Historical and Statutory Notes

Complementary Legislation:  
Neb.—R.R.S. 1943, § A1-105.

C.R.S.1953, § 148-4-1.  
C.R.S.1963, § 149-4-1.

Derivation:  
Laws 1925, H.B.484, § 1.

#### Law Review and Journal Commentaries

Colorado's Water Resources. D. Monte Pascoe, 55 U.Colo.L.Rev. 391 (1984).

Effect of Water Law on the Development of Oil Shale. Jan G. Laitos, 58 Denv.L.J. 751 (1981).

Water rights protection in water quality law. Gregory J. Hobbs, Jr. & Bennett W. Raley, 60 U.Colo.L.Rev. 841 (1989).

#### Library References

States Ⓒ 6.  
Westlaw Topic No. 360.

Westlaw Topic Nos. 360, 403.  
C.J.S. States §§ 31 to 32, 143.

#### Notes of Decisions

##### Construction and application 1

##### 1. Construction and application

As a result of changed conditions since the compact was created, South Platte River Compact was deficient in establishing standards for administration within Colorado to provide for meeting its terms, and thus State Engineer was justified in promulgating rules for the river basin pursuant to his compact rule power; however, because State Engineer was still constrained by all of statutory restrictions imposed on his

water rule power, including restrictions on his authority to approve out-of-priority uses of water involving replacement water, State Engineer's compact rule power did not authorize him to promulgate river basin rules giving him authority to unilaterally approve replacement plans for out-of-priority groundwater depletions by pre-1972 wells. *Simpson v. Bijou Irrigation Co.*, 2003, 69 P.3d 50, modified on denial of rehearing. States Ⓒ 6; Waters And Water Courses Ⓒ 133; Waters And Water Courses Ⓒ 142

#### ARTICLE 66

#### Rio Grande River Compact

##### Section

37-66-101. Rio Grande River compact.

37-66-102. Compact to be ratified.

**SOUTH PLATTE RIVER COMPACT**

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**Report**

**of**

**Delph B. Carpenter**

**Commissioner for Colorado.**

Governor William E. Sweet,  
Denver, Colo.

Sir:                    In Re: South Platte River Compact.

I have the honor to report that a compact was signed by Commissioners for the States of Colorado and Nebraska at Lincoln, Nebraska April 27, 1923, providing for the permanent equitable distribution of the waters of the South Platte River. The compact was executed by me as Commissioner for the State of Colorado under authority of Chapter 243, Session Laws 1921 and Chapter 190, Session Laws of 1923, and by Hon. Robert H. Willis, Commissioner for the State of Nebraska, acting by appointment of the Governor. It was executed in duplicate originals, one of which has been deposited with the Secretary of State of each of the signatory states, and the compact will become operative when approved by the Legislature of each of the signatory States and by the Congress of the United States.

The compact generally provides as follows:

For purposes of administration, the South Platte River in Colorado is divided into two sections. The "Upper Section" includes that part of the South Platte river in Colorado above the intersection of the river with the west boundary of Washington County (east boundary of Morgan County). The "Lower Section" corresponds with Water District No. 64 and is that part of the South Platte River in Colorado between the west boundary of Washington County and the intersection of the

of the South Platte River by Colorado and its citizens, was dismissed and there is no other pending or threatened litigation on this important river.

#### MEMORANDUM

The compact concludes negotiations and continuous studies of water supply, engineering and other problems since 1916. It is the successful result of probably the first effort to use the treaty powers of the states in the settlement of interstate controversies respecting the waters of western streams.

The changed river conditions, due to development in Colorado since 1859, make possible the conclusion of a compact between the two states which will protect the water users in Nebraska, without injury to present and future users in Colorado, and will permit practically unlimited expansion and development in Colorado.

A review of the facts and of the history of the stream is essential to an understanding of the compact.

Development in Colorado, fortunately, commenced near the headwaters of the South Platte with resultant "land-storage" of water over an immense acreage long prior to June 14, 1897, the alleged date of commencement of the canal of the Western Irrigation District, the principal claimant in Nebraska. The flow of return and seepage waters coming back to the river from irrigation of Colorado lands, has resulted in a constant supply at the interstate line. This flow is increasing and will soon be sufficient to care for the full demands of Nebraska as determined by

the compact, while great quantities of water annually flow to waste across the interstate line, during the flood season and the winter months, which are available for diversion by the proposed Perkins County Canal without injury to present or future development in Colorado, principally by reason of the fact that most of said waters return to the river below available points of diversion by Colorado constructors. The once "disappearing" flood stream has been converted into one of constant flow making possible the development in both states.

The South Platte River rises wholly within the State of Colorado, with the exception of Lone Tree, Crow and Lodgepole Creeks, tributaries which enter the stream from the north and have their rise in Wyoming. From its sources at the Continental Divide, the stream flows northeasterly through South Park, emerging from the mountains at Platte Canon, and thence flows northerly to the mouth of the Cache la Poudre, receiving contributions from various large tributaries below the canon. It then flows easterly and northeasterly, to the boundary line between Colorado and Nebraska, and thence easterly to join the North Platte River at North Platte, Nebraska.

The area drained and served by the South Platte is quite extensive in the upper portion and gradually contracts as the river proceeds easterly. From Julesburg, Colorado, to North Platte, Nebraska, the river flows through a narrow valley

of the river. It was ascertained that an additional annual storage and application of 25,000 to 35,000 acre feet of water would be adequate to care for all probable future expansion of irrigation in Water District 64, by diversions made from that portion of the river.

During the months of low flow the Colorado canals are justly entitled to practically all of the water available for diversion in both sections of the stream. During periods of high flow there is water enough for all appropriators in both states. During the interval intervening between the high flow and the extreme low flow some regulation of diversions by canals in Water District 64 will be required to pass 120 second feet of water across the interstate line for use in Nebraska. But this interval is of short duration and the adjustment of diversions by the water officials will have little effect upon diversions in Colorado. The increase of flow at the state line will ultimately remove all necessity for regulation.

The compact was prepared during the winter of 1922-1923. Several drafts were made and submitted for suggestion and criticism by the Attorney General of each State and by the engineers, water-supply experts and attorneys for the canal companies in both states. After final approval, the compact was signed at Lincoln, Nebraska, April 27, 1923, by the Commissioners. It was then submitted to the Nebraska Legislature by special message of Governor Bryan and was approved. It will become effective upon approval by the General Assembly of the State of Colorado and the Congress of the United States.

The compact is satisfactory to water users in both states. It affords a permanent solution. Its provisions are simple and its operation will require no additional employees in either state. In due course of time and with improvement of flow at the interstate line, it will become self-executing. Its ratification will permanently remove opportunity for interstate litigation, similar to that obtaining with respect to the Arkansas River. Under it, new development may proceed with assurance of title to uses of water and with benefit to both states. It assures permanent peace with our neighboring state and directly benefits the majority of our people in the security of their possessions and in their opportunities to use the natural resource most essential to their prosperity and the general welfare of our state.

I take pleasure in calling attention to the valued services of R.G. Hesse, irrigation expert for Colorado from 1916 to 1923, who served as my associate and advisor throughout the prolonged negotiations. His studies of the water supply problems of the South Platte river are recognized to be among the most thorough and comprehensive ever conducted upon any river system of like magnitude. His data became the basis of the compact.

I respectfully suggest that the compact be submitted to the General Assembly of the State of Colorado and recommend its approval.

Respectfully submitted.

Denver, Colo.  
Jan. 7, 1925.

Delph E. Carpenter  
Commissioner for Colorado.



DELPH E. CARPENTER  
LAWYER  
GREELEY, COLORADO

Greeley, Colorado,  
April 14, 1922.

My Dear Governor Shoup:-

In Re: Formulation Interstate  
Compact - South Platte - Nebr.  
and Colo.

I take pleasure in reporting that, pursuant to advices heretofore forwarded me and also to your office, Hon. R.W. Willis, of Bridgeport, Nebraska, was appointed as the Commissioner for Nebraska, to sit upon the Interstate Compact Commission between the State of Colorado and the State of Nebraska for the purpose of negotiating a compact between the two states respecting the future use and distribution of the waters of the South Platte River.

Pursuant to the notice of his appointment heretofore received from your office as well as from the Governor of Nebraska, I entered into communication with Mr. Willis and it was mutually arranged that we should meet at Julesburg, Sedgwick County, Colorado, Monday, April 10th at the hour of ten o'clock A.M. for a first conference and discussion.

Pursuant to the above arrangement I departed from the City of Greeley in company with R.G. Hosea, Deputy State Engineer of Colorado, and expert in charge of the South Platte River investigations, on the afternoon of April 9th, going by way of Fort Morgan for conference with A.H. Cutler, for some years Secretary of the associated ditches of the South Platte, preliminary to meeting with Mr. Willis. A violent storm delayed the meeting at Julesburg and we arranged by telephonic communication to meet at that point on Tuesday, the 11th at ten o'clock A.M. On the evening of the 10th Mr. Hosea and myself held a consultation with Mr. A.H. King of Sterling, Colorado, General Manager for The North Sterling Irrigation District, respecting the general river situation in that vicinity and particularly with regard to the diversions heretofore made by the irrigation system of the North Sterling Irrigation District.

I met Mr. Willis at Julesburg Tuesday A.M. at the hour appointed and after exchanging credentials, and having found the same to be in due and proper form, we proceeded by auto to an inspection of the irrigated area in Colorado between Julesburg and the Town of Ovid and thence northerly to the interstate line. On the afternoon of said day we

traversed the Nebraska area included within The Western Irrigation District and inspected various small abandoned ditches, at one time diverting water from the South Platte river within the State of Nebraska. At various times during the day we observed the line of partially constructed canal excavated by the old Perkins County Company which was intended to divert waters from the South Platte on the south bank about one mile west of Old Fort Sedgwick and convey the same for a distance of several miles through the State of Colorado and into the State of Nebraska near the northeast corner of the State of Colorado, from whence the same were to have been conveyed to certain reservoirs near the north line of Perkins County, Nebraska, for irrigation of lands in that county.

During the evening of the 11th we had an extended conference respecting the ambition of certain Nebraska parties to now construct a canal and reservoir system along substantially the lines originally selected for the old Perkins County Canal. This of course would involve a diversion of water in Colorado for use in Nebraska, and, unless protected by interstate compact, would tend to lay a servitude upon the territory and river within Colorado for the almost exclusive benefit of lands within the State of Nebraska, there being but about 1000 acres of land in Colorado which are irrigable from this proposed canal.

I stated at the outset the various objections which would be interposed to any such construction unless prior assurance and guaranty against adverse assertions of claim as to future Colorado development, should be made by interstate compact properly ratified and approved by Congress. I also called Commissioner Willis' attention to the 1917 Act of the Colorado Legislature forbidding the diversion of water within the State of Colorado for use in other states and advised him that this Act was the expression of the people and now prevailing view of the legislatures of Colorado.

Mr. Willis proposed that the State of Nebraska would cause all the old abandoned ditches between North Platte and the interstate line below Julesburg, to be declared officially abandoned, leaving but the appropriation of The Western Irrigation District as an existing claim upon the river and then proposed that we recognize the last mentioned appropriation as having a priority and superior claim over substantial Colorado development.

#3.

To this proposition I made reply that the State of Colorado could not concede that any diversion from either the South Platte or the main Platte within the State of Nebraska had any claim upon the waters of the stream within the State of Colorado; that when these canals were originally constructed the river was dry throughout most of the season; that since that time the large irrigation development in Colorado had so altered natural conditions that the river was now a stream of constant flow across the interstate line by reason of the waters returning from the irrigated lands supplied from the river within Colorado; that now The Western Irrigation District had a constant supply of water and that more water was available for diversion by that canal than could be economically applied for the irrigation of the lands to be served thereby and that in view of these conditions the State of Colorado would not concede to any claim of foreign servitude upon the stream within its territory.

I then suggested to Commissioner Willis that I could see no objection to permitting the construction of the new proposed Perkins County Canal, providing such construction were preceded by an interstate compact guaranteeing the State of Colorado and its citizens against all adverse claims by reason of the construction and appropriation of such a canal which might later be asserted against present or future diversions within Colorado and also suggested that as a pre-requisite to such an assurance the State of Colorado must insist that the State of Nebraska relinquish all claims upon the river for all past development upon that stream within the State of Nebraska.

I pointed out to Mr. Willis the fact that his suggestion of recognition of interstate priorities would call for and involved administrative machinery out of which probably conflict would develop and that Colorado had better remain in her present position than to permit the construction of any new works which would further complicate the administration of the distribution of water from the stream within Colorado.

On the 12th inst. Mr. Hosea, Mr. Willis and myself made a general inspection of the various canals and reservoirs from Julesburg to Balzac, Colorado. At the latter point we also inspected the North Sterling canal and the inlet canal for the Prewitt reservoir, both of which draw water from the river above the state gauging and rating station at Balzac. The Balzac station represents substantially the dividing point between Water Districts 1 and 64 of the State of Colorado and the last mentioned canals make their diversion within District 1. Our inspection of the 12th included practically all diversions

#4.

from the South Platte within District 64 and upon both sides of the river. While this investigation was necessarily rather hasty, the effect nevertheless was that of getting a general view of the entire situation within District 64.

Commissioner Willis is an irrigation expert with more than 25 years experience respecting the diversion of waters from the North Platte in Nebraska and the return of waters from the irrigated lands in that state. He is a man of wide observation and good judgment. His fund of knowledge of the conditions upon the North Platte permitted him to readily grasp the situation upon the South Platte within District 64 and he became convinced not only of the enormous amount of return water in that section of the river but as well of the probability of a large increase to that return as the irrigated area is extended under the irrigation systems in Colorado and particularly under the North Sterling Irrigation District system.

On Our return to Sterling on the evening of the 12th Commissioner Willis again renewed his suggestion that the State of Colorado recognize a prior appropriation for the Western Canal; that if Colorado would recognize this appropriation Nebraska would waive all other claims upon the river; that the Nebraska parties be permitted to construct the Perkins County system and that it have its relative priority as though it were a Colorado ditch.

I repeated my objections of the previous evening and stated that it would be useless for us to further discuss the question of the recognition by Colorado of any present or future claims of the State of Nebraska and its citizens upon the Colorado portion of the stream and called to his attention the fact that Nebraska is now permitting enormous quantities of water to flow down the stream to waste, while Colorado is utilizing all of the winter flow down to Balzac station and is conserving most of the flood flow of the summer and that in view of the great benefit to the river by reason of the Colorado conservation the State of Nebraska should be willing to waive all claims of appropriation upon the stream, either present or future, and that it should be contented with the acceptance of my suggestion that the Nebraska parties be permitted to head their canal in Colorado under guaranty against interference with future Colorado development.

#5.

Mr. Willis gave more favorable consideration to this proposition than he had on the previous evening. We discussed at great length the whole water flow history of the South Platte. Engineer Hosea brought forward the reports of his many detailed hydrographic surveys and his hydrographs and other material, tables etc. Commissioner Willis was very much interested and highly pleased with the information furnished by Mr. Hosea and at the conclusion of his inspection he suggested that Nebraska would be willing to withdraw all present or future claims to any part of the waters of the river above Balzac station and would rest contented with an interstate administration of priorities from Balzac to below the interstate line, Colorado to have the privilege of diverting all the water of the river at any point above Balzac station.

I again replied that the Colorado Legislature would not look with favor upon any overlapping of jurisdiction; that the forces of nature would so operate that the water flowing across the interstate line and above that point at the proposed heading of the Perkins County canal, would not only continue in its present condition but would materially increase in the years to come; that the only real concern of Nebraska and its citizens should be that of utilizing the available waters now passing to waste, especially during the winter months and that in view of my suggestion that Colorado would be willing to grant Nebraska the privilege of heading its canal in Colorado, no further or additional claim should be made by the State of Nebraska or its citizens. At the conclusion of our conference Mr. Willis seemed quite inclined to believe that my suggestion could be acceptable but stated that he must have his information in such form that he might be able to convince the Nebraska legislatures of the facts respecting the river flow and its probable increase. He requested that Mr. Hosea prepare and place in his hands such hydrographic data as we might care to release in order that he might check the same with the Nebraska records and fortify himself in his conclusions hastily drawn from inspection of the river.

We assured Commissioner Willis that Mr. Hosea would comply with his request at an early date and on the morning of the 13th we adjourned negotiations to be resumed at some convenient date to be mutually arranged.

Upon our return trip Mr. Hosea and myself held an extended consultation with Senator Colwell of Brush, President of the Colorado State Water Users Association and President

#6.

of the association formed by the ditches of the South Platte. We advised him in considerable detail of the negotiations and of the suggestions made on behalf of the State of Colorado, all of which seemed to meet with his approval.

I accordingly requested of Mr. Hosea that he use all convenient dispatch in preparing and placing in Commissioner Willis' hands such information as he requested. Practically all of this data is contained in the published reports of the State Engineer of Colorado and harm can come from placing the same in the hands of Commissioner Willis.

Respectfully yours,



Commissioner for Colorado.

To His Excellency Oliver H. Shoup,  
Governor of Colorado,  
Denver, Colo.

August 6, 1932.

M. C. Hinderlider,  
State Engineer,  
Denver, Colorado.

My dear Mr. Hinderlider:

This is to acknowledge your inquiry, by phone, respecting letter of August 3, 1932, from Hon. R. H. Willis of Nebraska to you respecting storage in Colorado of waters of the South Platte since April 1st, and enclosing a copy of letter of August 1st from Hon. V. H. Halligan of North Platte, Nebraska to R. H. Willis, respecting administration of diversions in Colorado under the South Platte River Compact.

Neither of these letters specifies the reservoir to which Judge Halligan refers and it is impossible to state whether the reservoir is controlled by Article IV, Par. 2 of the South Platte River Compact. All diversions by ditch and reservoir projects taking water from the South Platte in Colorado below and east of the intersection of the river with the west line of Washington County, between April 1st and October 15th of each year, are subject to Article IV, Par. 2, of the Compact. This portion of the South Platte River is coincident with Water District No. 64 of the State of Colorado and Par. 2 of Article IV of the Compact, prohibits diversions from this portion of the river in Colorado "to supply Colorado appropriations having adjudicated dates of priority subsequent to the 14th day of June, 1897, to an extent that will diminish the flow of the river at the Interstate Station, on any day below a mean flow of 120 cubic feet of water per second of time." This provision applies only to this portion of the South Platte River in Colorado. At all points above the west line of Washington County, diversions are unlimited either as to quantities or priorities, as regards delivery of water to Nebraska (Article IV, Par. 7, South Platte River Compact):

If the point of diversion for the reservoir in question is from the "Lower Section" of the South Platte River in Colorado; if the priority for such diversion is subsequent to the 14th day of June 1927; and if the diversion of water diminished the flow at the Interstate Station below 120 cubic feet per second of time when needed in Nebraska; in such event the diversion would be contrary to the South Platte River Compact. However, if the diversion by the reservoir project occurred in the "Upper Section" of the river (above the west line of Washington County), irrespective of the location of the

reservoir, there would be no violation of the Compact.

The Compact defines the rights of each State and controls interstate relations between Colorado and Nebraska with respect to the waters of the South Platte River. It was approved by the legislatures of Colorado and Nebraska and by The Congress of the United States and is the supreme law of the river. It binds both States and their water users.

For purposes of intrastate control and administration of uses of water within Colorado, the true test of an appropriation is beneficial use for the purpose designed and the means or method employed in making such beneficial use is immaterial, and priority of appropriation controls regardless of the instrumentality employed. Ditches, reservoirs, pumping plants, water wheels and other similar structures are but means to an end (beneficial use). The method employed in no manner affects the priority and the relative right to divert. Under our Constitution, a senior reservoir project has a right to divert superior to the right of a junior ditch. Storage of water in a reservoir is not a use but a mere incident occurring between the diversion and the beneficial use. Storage is no more a use of water than the temporary warehousing of an implement enroute from factory to field of operation would be a use of the implement. Under this fundamental principle the storage of water enroute from river to land in order of priority, during the irrigation season is constitutional and permissible and is encouraged because it is universally recognized that such incidental storage provides more complete control of deliveries and thereby promotes economies and increases the duty in uses of such waters. These principles control the internal administration of uses of waters within Colorado but the South Platte River Compact controls as between Colorado and Nebraska.

The letter of Judge Halligan indicates misinformation respecting snowfall and water supply conditions in the South Platte River drainage during the past twelve months. These conditions are best known to your office but I understand that the snowfall and water supply are very much below normal and that there were no floods this season. I suggest that you advise Mr. Willis of conditions.

Respectfully yours,

Delph E. Carpenter.

DEC:DM



REPORT  
of  
Committee on Investigation  
Investigations

OF THE SENATE



BY AUTHORITY OF  
S. R. No. 16 of the  
Seventeenth General Assembly

(Senate Journal, 1909, p. 1052.)

# REPORT

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## Committee on Irrigation Investigations of the Senate

By Authority of S. R. No. 16 of the Seventeenth General Assembly

(Senate Journal, 1909, p. 1092)

Senator Carpenter, Chairman of the special committee on S. R. No. 16, of the Seventeenth General Assembly, submitted the following report:

STATE OF COLORADO,  
SENATE CHAMBER.

Denver, Colorado, January 31, 1911.

The Eighteenth General Assembly of the State of Colorado.

Your Committee of the Senate, appointed under authority of Senate Resolution No. 16 to inquire into and investigate, prior to the convening of the Eighteenth General Assembly, the conditions of the streams and water sheds of the State of Colorado, and the diversion, storage and use of the waters thereof; the development, use and application of return or seepage waters; the relation of public and State lands to the water supplies of our stream, and the administration thereof to the betterment, not only of said lands, but also for the protection of said streams; for consultation with divers organizations and societies having for their object the investigation or improvement of laws relative to public lands, waters and irrigation, and to consult with the various departments of State having to do with the administration of the laws relative to public lands, State lands and the waters of our public streams, as will more particularly appear from said resolution, beg leave to submit the following report of its investigation, together with their conclusions and recommendations as in said resolution duly authorized.

### GENERAL.

Your committee has been unavoidably hampered in the performance of its duties through lack of funds or appropriation with which to carry on the work authorized and directed, and particularly the investigation of conditions relative to seepage and return waters, by the convening and prolonging of the extra session of the Legislature during the latter part of the summer and early fall of 1910, at which time it was contemplated that a series of conferences would be held throughout the State with all parties vitally interested in the matter of irrigation and public water supply, by means of which more comprehensive information could be obtained and more complete findings and recommendations warranted. We have been able to partially investigate conditions throughout a greater portion of the State by segregation of the work of the committee into three separate departments, and by a

summary of the work of each of these departments through a visit of the chairman of your committee to different portions of the State during the year 1910.

Your committee makes the general finding that the constitutional provisions and the laws of the State of Colorado at present in operation, in so far as they affect the fundamental principles upon which the right of diversion, use and application of the waters of our public streams are founded, should be left decidedly alone, and should not be tampered with by inappropriate legislation. Those who are engaged in attempts to cause radical departures from the rules and precedents already established should be discouraged. The fabric of the law of the State of Colorado relative to the waters of its public streams consists of the constitutional provisions and guaranties, the various acts passed by our Legislatures and the decisions of our appellate courts, which have been remarkably consistent and far-sighted, regardless of political changes or variance of the conditions surrounding the court from time to time. In fact, a large part of our water law is "court made," within the common acceptance of that term, and upon these decisions, as well as the constitutional provisions and the statutes, have vested titles, rights and franchises involving millions of dollars. From the beginning of constitution and law in Colorado the Legislatures and courts have, almost without exception, kept within the bounds of conservative legislation and judicial construction upon this our most important interest, and a continuation of such action and policy must prevail in order that our system may be preserved and perpetuated.

We further find that in no instance should legislation be tolerated which will tend to impair the fundamental doctrine of the acquisition of title to water rights by priority of appropriation and beneficial use, or which will tend to embarrass those officials engaged in the administration of such laws or the courts in the interpretation of the same. The Constitution of the State provides:

*"The water of every natural stream, not heretofore appropriated, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided." (Art. XVI, Sec. 5.)*

*"The right to divert the unappropriated waters of any natural stream shall never be denied. Priority of appropriation shall give the better right as between those using water for the same purpose. \* \* \* " (Art. XVI, Sec. 6.)*

Any far-fetched theory of State control which will in any manner interfere with the right of appropriation in order of priority, other than the proper exercise of the police power of the State, must be condemned as contrary to the Constitution and a radical departure which can and must increase litigation and to a great measure impair the stability of vested rights. Any attempt to confer judicial powers upon the State Engineer, or any non-judicial tribunal, is not only hazardous but can and must end in interminable confusion and litigation. By many it has been urged

upon your committee to divest the State Engineer of many of his present powers and to these, as well as the exponents of bureaus and commissions of State control, we most earnestly recommend, "Leave well-enough alone."

We further find that, in order to preserve the integrity of the provisions of our Constitution and the statutes and decisions of our courts, it will be necessary for the Legislature of this State, for many years to come, to promptly respond, by liberal appropriation of public funds, to any demand made by those engaged in resisting attacks by the federal government and by other states or the citizens thereof, which tend to impair the vested rights and titles of the appropriators of water within the State of Colorado, or to hamper the further acquisition of such titles and the further development of our natural resources. Neglect of this all important defense may not only impair and destroy the property of our citizens, but must of consequence decrease our public revenue. It were better far that our legislative action and public funds be directed toward the defense of our property, than in the creation of cumbersome, autocratic bureaus or commissions, or the conferring of unlimited powers upon some State official, appointed from political consideration, whose policies, rules and precedents must, and experience demonstrates too often have been, reversed and repudiated by his political successor.

#### FEDERAL INTERFERENCE.

While your committee finds that great credit should be given the various officials and departments of the federal government for their aid in the construction of works and the reclamation of lands throughout the arid West, and particularly the work of the Geological Survey in the gauging of streams and the rapid completion of topographical surveys of the drainage areas of streams, it is nevertheless apparent that the national government, acting through its several departments and the officials thereof, has manifested a disposition to forget that the work of the reclamation service must at all times be and remain entirely under and subject to the constitutional provisions, statutes and judicial decisions of the several states, and, on the contrary, has sought in a measure to deprive the states of the exclusive control of the waters of the streams within their borders, and to place the control of such streams within the jurisdiction and subject to the rules and regulations of one or more of the departments of the federal government, with the administration of all matters pertinent to such water supplies almost exclusively in the control of officials at the national capital. This disposition of the federal government was and is manifested with relation to our own State, by intervention in the case of the State of Kansas vs. the State of Colorado, by appearance in other cases pending before the courts, and by refusal of the Department of the Interior to grant rights of way for ditches, reservoirs and power sites upon the public domain within our borders. Unless the several states of the arid West,